

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-212175

DATE: October 4, 1983

MATTER OF: GAI

DIGEST:

Failure to acknowledge amendment changing the small business eligibility criteria does not render bid nonresponsive since amendment does not concern bidder's obligation to perform in accordance with the requirements of the solicitation.

GAI protests the award of a contract to Hodges & Bryant of N.N., Inc. (H&B), under National Aeronautics and Space Administration (NASA) invitation for bids (IFB) No. 1-55-5612.0124A. H&B failed to acknowledge an IFB amendment.

The protest is denied.

The solicitation was a total small business set-aside. Amendment No. 1 changed the small business size monetary standard from \$5 million to \$12 million. Although H&B did not acknowledge the amendment, NASA found that the amendment did not affect the IFB's quantity, quality or delivery requirements or the bidder's price. It therefore found that under NASA Procurement Regulations §§ 2.404-2 and 2.405 (iv)(B), H&B's failure to acknowledge the amendment did not affect the responsiveness of its bid and could be waived as a minor informality.

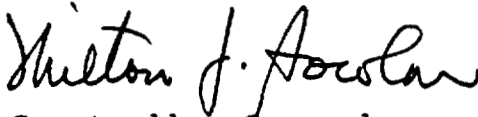
Although, as the protester correctly notes, a bidder's failure to acknowledge a material amendment prior to bid opening generally renders the bid nonresponsive and the bidder ineligible for a contract award, Rockford Acromatic Products Company, B-208437, August 17, 1982, 82-2 CPD 143, this rule is not applicable to the present case.

A bid is responsive if it unconditionally offers to meet the needs of the government as those needs are stated in the solicitation. Redeye Enterprises; Standard Equipment Company, B-204814; B-204814.2, March 25, 1982, 82-1 CPD 283. Upon the government's acceptance of a responsive bid, the contractor becomes bound to perform in accordance with the material terms and conditions of the solicitation. Id.

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Based on this, we have found that under a total small business set-aside, a matter relating to a firm's eligibility as a small business does not affect responsiveness. For example, a bidder's erroneous certification of its small business size does not render its bid nonresponsive. Paving and Construction Co., B-205179, June 21, 1982, 82-1 CPD 608; Jimmy's Appliance, B-205611, June 7, 1982, 82-1 CPD 542. We reasoned that the small business certification concerned the bidder's eligibility for award rather than the bidder's commitment to perform in accordance with the requirements of the solicitation. We also noted that the Small Business Administration (SBA) is responsible for determining the eligibility of a small business and, therefore, the certification did not provide a contractual requirement which the government could enforce once a contract was awarded.

Here, H&B certified that it is a small business, and we find that these cases govern the present factual situation. As NASA notes, amendment No. 1 changed the definition of an eligible small business. Therefore, any question concerning a bidder's ability to comply with this amendment would be a matter for SBA. Further, the amendment did not change any of the solicitation's performance requirements. Thus, even though H&B failed to acknowledge this amendment, H&B is still obligated to perform in strict accordance with the requirements of the solicitation. Accordingly, NASA properly determined that H&B's low bid was responsive. Cf. Jimmy's Appliance, supra.

for 
Comptroller General
of the United States